



New South Wales

# Emergency Services Legislation Amendment Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to protect employees who take part in emergency operations from victimisation,
- (b) to expand the class of persons who can give directions to take safety measures,
- (c) to abolish the State Disasters Council and transfer its functions to the State Emergency Management Committee and to incorporate the State Rescue Board,
- (d) to update the membership of the State Emergency Management Committee,
- (e) to provide for the publishing of “state of emergency” orders on the internet,
- (f) to protect from personal liability certain persons executing the *State Emergency and Rescue Management Act 1989*,
- (g) to update requirements concerning the accreditation and reporting of rescue units,
- (h) to broaden the emergencies and emergency services organisations to which the *State Emergency and Rescue Management Act 1989* applies,
- (i) to update the functions of the NSW Rural Fire Service and the Commissioner of Fire and Rescue NSW to recognise their role in respect of emergencies other than fires,
- (j) to update a provision relating to the imposition of total fire bans to permit a ban to apply to part of a local government area and to provide a discretion as to how notice of a ban is to occur in order to take account of new forms of communication (including social media),
- (k) to provide a similar discretion in relation to notices that amend, cancel or suspend bush fire danger periods or fire permits,

- (l) to permit the Commissioner of the NSW Rural Fire Service to appoint the officers of rural fire brigades in certain circumstances,
- (m) to require bush fires to be reported to 000 rather than to local fire brigades,
- (n) to permit the taking of water without charge from any water source for certain purposes including fighting fires,
- (o) to permit the Commissioner of Fire and Rescue NSW to determine fees for the provision of non-core services where those fees are not otherwise prescribed,
- (p) to make further provision for the delegation of functions,
- (q) to update terminology, including renaming volunteer fire brigades as retained fire brigades and renaming controllers as commanders,
- (r) to rename the *Fire Brigades Act 1989* as the *Fire and Rescue NSW Act 1989*,
- (s) to make a number of minor statute law amendments.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act other than Schedule 1, which commences on 7 December 2018.

## **Schedule 1      Amendment of State Emergency and Rescue Management Act 1989 No 165**

**Schedule 1 [1]** provides for the application of the *State Emergency and Rescue Management Act 1989* to additional agencies (including Surf Life Saving New South Wales) by including them within the Act's definition of *emergency services organisation*. **Schedule 1 [15]** exempts Surf Life Saving New South Wales from a requirement to notify the NSW Police Force of surf life-saving rescue incidents.

**Schedule 1 [4]** expands the definition of *emergency* to include an emergency arising from an occurrence that causes a failure of, or significant disruption to, an essential service or infrastructure.

**Schedule 1 [7] and [45]** abolish the State Disasters Council. **Schedule 1 [2], [5], [6], [31], [32] and [42]–[44]** make consequential amendments. **Schedule 1 [9]** confers functions (that were previously exercised by the State Disasters Council) on the State Emergency Management Committee.

**Schedule 1 [8]** includes the heads of certain emergency services organisations as members of the State Emergency Management Committee.

**Schedule 1 [11]** permits the Premier to publish on the internet an order declaring a state of emergency.

**Schedule 1 [13] and [45]** decorporatise the State Rescue Board.

**Schedule 1 [16] and [17]** require rescue units of the NSW Rural Fire Service, and rescue units principally concerned in the salvage of vessels, to be accredited by the Minister. **Schedule 1 [19]** requires the personnel register of a rescue unit to be provided to the State Rescue Board on request (rather than every 6 months).

**Schedule 1 [21]** applies provisions that protect employees who take part in emergency operations from victimisation to emergency operations carried out in a declared state of emergency unless the Premier orders that the provisions should not apply. **Schedule 1 [22]** makes a consequential amendment.

**Schedule 1 [23]–[28]** permit an authorised officer to give an order directing that Part 3A (Employment protection for volunteer emergency workers) of the *State Emergency and Rescue*

*Management Act 1989* applies to emergency operations carried out in connection with a specified emergency. The order can remain in force for no more than 48 hours. An authorised officer is a Commissioner or Deputy Commissioner of the NSW Rural Fire Service or the State Emergency Service or the State Emergency Operations Controller or Deputy State Emergency Operations Controller. The Premier can revoke or revoke and replace the order at any time (an order of the Premier may remain in force for longer than 48 hours).

**Schedule 1 [29] and [30]** provide that the Minister for Emergency Services (the *Minister*), the State Emergency Operations Controller, senior police officers and police officers of a prescribed class (rather than only senior police officers) may direct the taking of safety measures in circumstances other than a declared state of emergency. **Schedule 1 [37]** provides that persons other than police officers may be so directed, and may enter premises in order to comply with such a direction. **Schedule 1 [12], [33]–[36] and [38]–[40]** make consequential amendments.

**Schedule 1 [41]** protects government sector employees and members (and members of staff) of emergency services organisations from personal liability for executing the *State Emergency and Rescue Management Act 1989*.

**Schedule 1 [3]** corrects a reference to an emergency services organisation.

**Schedule 1 [10]** updates a reference to an office consequential on the change of the name of that office by Schedule 4.

**Schedule 1 [14]** revises the titles of certain members of the State Rescue Board.

**Schedule 1 [18]** updates a cross-reference.

**Schedule 1 [20]** standardises terminology.

## **Schedule 2      Amendment of Rural Fires Act 1997 No 65**

**Schedule 2 [1]** updates a note consequential on changes to definitions made by Schedule 1.

**Schedule 2 [2]** updates the functions of the NSW Rural Fire Service to recognise its role in respect of emergencies other than fires.

**Schedule 2 [5]** permits the Commissioner of the NSW Rural Fire Service (the *Commissioner*) to appoint officers for a rural fire brigade if the body or person that forms the brigade fails to do so.

**Schedule 2 [7]** provides for the delegation and subdelegation of the Commissioner's functions in relation to co-ordinating bush fire fighting. **Schedule 2 [6]** makes a consequential amendment.

**Schedule 2 [8]** provides that an occupier of land on which a fire is burning during the bush fire danger period must (if the occupier is unable to extinguish the fire) ensure that the fire is reported immediately to the 000 emergency telephone number. **Schedule 2 [9]** makes a consequential amendment.

**Schedule 2 [10]** provides that the Commissioner may modify the general bush fire danger period in respect of a local government area by order published in the Gazette. The order may also be published in any other manner approved in writing by the Minister for Emergency Services.

**Schedule 2 [13]** provides that notice of the cancellation of a fire permit by the Commissioner or the Commissioner of Fire and Rescue NSW (in circumstances where a notice cannot be given in writing directly to the permit holder because of weather conditions conducive to the outbreak and spread of bush fire) can be given in any manner that the relevant Commissioner considers appropriate.

**Schedule 2 [14]** substitutes a provision that authorised the making of a total fire ban order. The provision as amended clarifies that a total fire ban order may be subject to exemptions. It also permits a total fire ban order to apply in respect of part of a local government area and removes a requirement that notice of an order be published in a newspaper. The Commissioner will be able

to delegate the making of a total fire ban order to a senior executive officer of the NSW Rural Fire Service. **Schedule 2 [11]** makes a consequential amendment.

**Schedule 2 [3], [4], [17] and [19]** update cross references that are consequential on amendments (including renumbering) made to the *Environmental Planning and Assessment Act 1979*.

**Schedule 2 [12]** corrects typographical errors.

**Schedule 2 [15], [16], [18], [20] and [21]** make amendments consequential on the repeal and replacement of certain Acts and instruments.

**Schedule 2 [22] and [23]** repeal spent provisions.

### **Schedule 3      Amendment of Fire Brigades Act 1989 No 192**

**Schedule 3 [1], [3], [4] and [7]** rename volunteer fire brigades as retained fire brigades.

**Schedule 3 [2]** changes the name of the *Fire Brigades Act 1989* to *Fire and Rescue NSW Act 1989*.

**Schedule 3 [5]** sets out the functions of the Commissioner of Fire and Rescue NSW. These consolidate existing functions and add functions that recognise the Commissioner's role in respect of emergencies other than fires and hazardous material incidents. **Schedule 3 [6] and [8]** make consequential amendments.

**Schedule 3 [9]** makes it clear that the officer in charge at a fire or hazardous material incident may without payment take and use any water from any source on any land for the purpose of dealing with that fire or incident.

**Schedule 3 [10]** permits the Commissioner of Fire and Rescue NSW to take and use water from any source on any land for the purpose of training or demonstration by a fire brigade, but only if the Commissioner does so by arrangement with the owner, occupier or person having control or management of the land.

**Schedule 3 [11]** provides that if the regulations do not prescribe a fee in respect of certain non-core services provided by the Commissioner of Fire and Rescue NSW, the fee for the service is to be determined by the Commissioner.

### **Schedule 4      Amendment of State Emergency Service Act 1989 No 164**

**Schedule 4** replaces the terms region, unit controller, local controller and region controller with the terms zone, unit commander, local commander and zone commander.

### **Schedule 5      Consequential amendment of other Acts and instruments**

**Schedule 5** amends a number of Acts and instruments consequential on certain amendments made in Schedules 3 and 4.